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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,451

10/16/2003

Richard J. Ernst

14303

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24978 7590 06/24/2009  
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EXAMINER

EPPS, TODD MICHAEL

ART UNIT

PAPER NUMBER

3632

MAIL DATE

DELIVERY MODE

06/24/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/687,451

Applicant(s)

ERNST ET AL.

Examiner

Todd M. Epps

Art Unit

3632

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,8,12,26 and 32-39 is/are pending in the application.
- 4a) Of the above claim(s) 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,8,12,26 and 32-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is an Office Action **final** for serial number 10/687,451, Rod Hanger For Securing A Rod To A Substrate, filed on October 16, 2003.

#### ***Affidavits 1.132***

The declaration under 37 CFR 1.132 filed February 27, 2009 is sufficient to overcome the rejection of claims 1-2, 8, 12, 26, 33, 34 based upon the anti-rotation element with a generally hemisphered shape can be penetrated into a wall. However, the declaration is insufficient to overcome the rejection of Farrell '458 based upon the shape of a generally truncated hollow cone shape as set forth in the last Office action because: the shape as shown in Farrell '458 - Fig. 8.is exactly the same as applicant's truncated hollow cone shape shown in Fig. 6. Applicant will see that the walls (38, 48) of Farrell '458 do project outwardly like a half-cone with a hollow hole in between the walls.

#### ***Election/Restrictions***

Newly submitted claim 39 is directed to an invention that is distinct from the invention originally claimed for the following reasons: applicant is trying to further recited anti-rotation elements are formed by stamping, which is not found in the specification.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for

prosecution on the merits. Accordingly, claim 39 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37 is rejected to because it is not clear which shape of anti-rotation elements as applicant is now claiming a generally hemispherical shape. As previously rejected, the Examiner used a generally truncated hollow cone shape in the previous action.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 8, 12, 26, 33-34, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,758,465 to Logue in view of U.S. Patent No. 5,546,723 to Jones, and in further view of U.S. Patent No. 6,866,458 to Farrell et al. (Farrell).

Logue '465 discloses a rod hanger (fig. 5) comprising a generally planar mounting portion (24) defining a perimeter edge, and having a hole (52) along extending between a top surface (40) and a bottom surface (44) with the hole extending therebetween, a generally planar rod receiving portion (34) with a top surface (42), a bottom surface (46) and a hole (60) that includes a lip formation (64) disposed thereabout, and a connecting element (36), wherein the planes of the mounting and rod receiving portions are generally parallel, wherein rod receiving portion configured for threadably receiving the rod, wherein the rod hanger defines a unitary body with generally uniform thickness, wherein the hole of the mounting portion is coincident along the plane, has a radius and defines a circumference of 360 degrees, and wherein the mounting portion has four corners.

However, Logue '465 fails to specifically teach at least four anti-rotation elements on generally planar top surface of the mounting portion plane uniformly spaced from the hole, and wherein four anti-rotation members are configured for penetrating the substrate. Nevertheless, Jones '723 teaches a mounting portion (figure 1a-1c) with a central hole and four anti-rotation elements (14) disposed about the hole and spaced apart from each other by about 90 degrees along the circumference of the hole and

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dispose proximate to each of the corners of the mounting portion, and wherein four anti-rotation members are configured for penetrating the substrate. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hanger of Logue '465 with four anti-rotation elements disposed about the hole and spaced apart from each other by about 90 degrees along the circumference of the hole and dispose proximate to each of the corners of the mounting portion as taught in Jones '723 wherein doing so would provide for superior rotation prevention means.

Furthermore, Logue '465 in view of Jones '723 discloses the previous invention failing to specifically teach four anti-rotation elements have a generally truncated hollow cone shape. Nevertheless, Farrell '458 discloses a generally truncated hollow cone shape as shown in figure 8 for penetratingly engaging the wall. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hanger of Logue '465 in view of Jones '723 to replace the shape of the four anti-rotation elements with truncated hollow cone shape because one would have motivated to provide a clean cut through the surface without tearing or crushing the surface as taught in Farrell '458.

Claims 32, 35, 36, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logue '465 in view of Jones '723, and further in view of U.S. Patent No. 3,788,185 to Gutshall.

Logue '465 in view of Jones '723 fails to specifically teach wherein at least four anti-rotation members include a resilient cover, is secured by a chemical adhesive, and the resilient cover is formed of a polymer. Nevertheless, Gutshall '185 teaches wherein a mounting is secured by a resilient cover. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the rod hanger of Logue '465 in view of Jones '723 with four shape anti-rotation elements to include the resilient cover on each anti-rotation element as taught by Gutshall '185 wherein doing so would provide thereof for a protective coating on the anti-rotation members.

Furthermore, Logue '465 in view of Jones '723 discloses the previous invention failing to specifically teach wherein the resilient cover is secured by a chemical adhesive coat. Nevertheless, Gutshall '185 discloses wherein the resilient cover is secured by a chemical adhesive – a liquid bonding agent. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the rod hanger of Logue '465 in view of Jones '723 to include the adhesive coat because one would have motivated to provide a means for securing purpose as taught by Gutshall '185.

Last, Logue '465 in view of Jones '723, and in further view of Gutshall '185 disclose the previous invention failing to specifically teach wherein the anti-rotation elements have a generally hemispherical shape. Thus, Jones '723 discloses wherein the anti-rotation elements having nose-pointed prongs. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have

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modified the shape of anti-rotation elements of Logue '465 in view of Jones '723 to any shapes including a hemispherical shape because one would have motivated to provide a means for securing and gripping the plate into a wall or a ceiling. Furthermore, changing the shape of the anti-rotation elements would not make any difference since any shape of the anti-rotation elements would penetrate into a wall with a hammer and would not move at all.

### ***Response to Arguments***

Applicant's arguments filed February 27, 2009 have been fully considered but they are not persuasive.

In response to applicant's argument that Logue '465, Jones '723, Farrell '458, and Gutshall '185

In response to applicant's argument that there is no suggestion to combine the references (Logue '465, Jones '723, Farrell '458, Gutshall 185), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, applicant will see that the references of Logue '465, Jones '723, Farrell '458, and Gutshall '185 are presented in the above



office action, and are properly rejected since they all have a close tie to a fastener connection.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd M. Epps whose telephone number is (571) 272-8282. The examiner can normally be reached on M-F (7:30-4:30).

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T.M.E./

Todd M. Epps  
Patent Examiner  
Art Unit 3632  
June 19, 2009

/Alfred Joseph Wujciak III/  
Primary Examiner, Art Unit 3632